IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.662 OF 2007

IN

SUIT NO.2433 OF 1997

Mr.Arnold J.von Geyer & Anr. .. Plaintiffs.

Versus

Mumtaz Iqbal Shaikh & Ors. .. Defendants.

Mr.Denzil D'Mello for plaintiffs.

Mr.R.C.Shah i/b.Divya Shah Associates for defendant Nos.1 and 2.

Mr.Deepak Chitnis i/b.M/s.Deepak Chitnis-Chiprikar & Co. for defendant Nos.3 and 4.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5TH JULY, 2007.

P.C.:

1. Mr.D'Mello appearing for the plaintiffs states that the defendant No.3 has expired and his heirs and legal representatives are the respondents to this Chamber Summons.

2. Mr.Chitnis appearing for the deceased defendant

No.3 submits that the Chamber Summons is taken out after a delay and in any event the claim of the plaintiffs cannot be granted.

3. After perusing the Chamber Summons and the affidavit in support and noting the vehement objection of Mr.Chitnis, I find that the interest of justice would be sub served if an opportunity be given to the plaintiffs to have their claim adjudicated on merits as far as the deceased defendant No.3 is concerned. More so, when they have been prompt enough to apply to this Court, there is no delay neither is the Chamber Summons liable to be dismissed for want of bonafides. Ultimately, whether the plaintiffs prove their claim in the suit or not is an aspect not being gone into by me. All contentions on behalf of both sides are kept open.

4. Chamber Summons is made absolute in terms of prayer clauses (a) to (c). Amendment to be carried out within a period of two weeks from today. Amended copy be served on the defendants within a period of two weeks thereafter. Additional written statement, if any, to be filed within a period of six weeks from the date of receipt of copy of the amended plaint.

5. Suit to appear under the caption "For Framing

Issues" after eight weeks.

(S.C.Dharmadhikari, J.)